

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT pursuant to Civil Local Rule 7-10 and
 3 7-19, plaintiffs HTC Corporation and HTC America, Inc. (“HTC”) respectfully
 4 request leave to file a short surreply and supporting evidence to address two
 5 discrete factual assertions made for the first time in the reply brief filed by
 6 defendant Saint Lawrence Communications LLC (“SLC”) in support of its Motion
 7 To Dismiss or, in the Alternative, Transfer to the Eastern District of Texas.

8 SLC’s reply brief bears little resemblance to a proper “reply” brief. It makes
 9 numerous new arguments and attaches declarations and exhibits more voluminous
 10 than those submitted with its opening brief. HTC accordingly requests leave to file
 11 the attached two-page surreply brief, along with the accompanying declarations of
 12 Eddie Choy, Chris Owen, and Paul Brown, to address the following factual
 13 representations made for the first time in SLC’s reply brief: (1) that relevant
 14 Qualcomm witnesses are located in Texas and North Carolina; and (2) that SLC
 15 told HTC at a January 23, 2015 meeting that SLC would immediately file suit
 16 against HTC if settlement negotiations broke down or reached an impasse. Neither
 17 of these representations were made in SLC’s opening brief, and as explained in the
 18 proposed surreply, they are both inaccurate.

19 This Court has discretion under Civil Local Rule 7-10 to grant leave to file a
 20 surreply brief and supporting evidence. *See Chow v. Neutrogena Corp.*, No. CV
 21 12-04624 R(JCx), 2013 WL 5629777, at *1 (C.D. Cal. Jan. 22, 2013). “Because it
 22 is not equitable to allow a party to withhold substantial and material evidence and
 23 argument from its moving papers only to submit it to the reply to which the
 24 opposing party is not afforded an opportunity to respond,” *id.*, this Court should
 25 grant leave to file the attached surreply brief.

26 Alternatively, the Court should refuse to consider the matters presented for
 27 the first time in SLC’s reply brief. *See, e.g., Olenicoff v. UBS AG*, No. SACV 08-
 28 1029 AG (RNBx), 2010 WL 8530286, at *31 (C.D. Cal. Mar. 16, 2010) (“A district

1 court may refuse to consider new arguments submitted for the first time in a reply if
2 the arguments should have been presented with the opening brief.”). As such, if
3 this Court does not permit HTC to further respond, the new assertions, facts, and
4 arguments raised for the first time by SLC should not be considered by the Court in
5 deciding the pending motion filed by SLC.

6 On September 3, 2015, the parties met and conferred by telephone regarding
7 this *ex parte* application. Defendant indicated it would oppose this *ex parte*
8 application.¹

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10 Dated: September 3, 2015

Respectfully submitted,
COOLEY LLP

12 By: /s/ Heidi L. Keefe

13 Attorneys for Plaintiffs
14 HTC Corporation and HTC America, Inc.

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26 ¹ Pursuant to Local Rule 7-19 HTC provides the following contact information for
27 Defendant’s counsel: Foster C. Johnson (fjohnson@azalaw.com), Alisa A. Lipski
28 (alipski@azalaw.com), Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C.,
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DECLARATION OF PHILIP MAO

1. I am an attorney duly licensed to practice law in the State of California. I am an attorney with Cooley, LLP, counsel in this case for plaintiffs HTC Corporation and HTC America, Inc. (jointly, "HTC"). I have personal knowledge of the following, and if called to testify, could and would testify to the contents of this declaration.

2. On September 3, 2015, the parties met and conferred by telephone regarding this *ex parte* application. Defendant indicated it would oppose this *ex parte* application.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 3rd day of September, 2015 at Palo Alto, California.

Philip Mao
Philip Mao

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